

1 STEPHEN R. HARRIS, ESQ.  
2 Nevada Bar No. 001463  
3 HARRIS LAW PRACTICE LLC  
4 6151 Lakeside Drive, Suite 2100  
5 Reno, NV 89511  
6 Telephone: (775) 786-7600  
7 Facsimile: (775) 786-7764  
8 E-Mail: [steve@harrislawreno.com](mailto:steve@harrislawreno.com)  
9 Attorneys for Plaintiff/Trustee

7  
8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF NEVADA

10 \* \* \* \* \*

11 IN RE:

Case No.: BK-13-50937-btb  
(Chapter 7)

12 BLUE SUGARS CORPORATION  
13 FDBA KL ENERGY CORP, a Nevada  
14 corporation

Adv. Case No. 14-05046-btb

15 Debtor.

16 \_\_\_\_\_/ Hearing Date: 5/21/15  
17 and Time: 10:00 a.m.

18 W. DONALD GIESEKE, Trustee of  
the bankrupt estate of BLUE  
19 SUGARS CORPORATION,

Plaintiff's Status Report

20 Plaintiff,

21 vs.  
22 PETROBRAS AMERICA, INC., a  
23 Delaware corporation; PETROLEO  
BRASILEIRO S.A. - PETROBRAS,

24 Defendants.

25 \_\_\_\_\_/  
26 Plaintiff/Trustee W. DONALD GIESEKE ("Plaintiff"), Trustee for  
27 the Chapter Seven bankrupt estate of BLUE SUGARS CORPORATION, a  
28 Nevada corporation, by and through his attorney STEPHEN R. HARRIS,

1 ESQ. of HARRIS LAW PRACTICE LLC, hereby files the following status  
 2 report.

3 **1. Background**

4 On May 10, 2013 Blue Sugars commenced a bankruptcy  
 5 proceeding under Chapter Seven of Title Eleven, United States Code. W.  
 6 Donald Gieseke was appointed as the Chapter Seven Trustee.

7 On August 26, 2014 the Plaintiff filed the instant adversary  
 8 complaint against Petrobras America, Inc. (herein Petrobras America)  
 9 and Petroleo Brasileiro S.A.- Petrobras (herein Petrobras Brazil).

10 On November 17, 2014 Petrobras America and Petrobras Brazil  
 11 filed motions to dismiss, DE 10 and 11. On February 24, 2015 the  
 12 Plaintiff filed his oppositions to the motions, DE 46 and 47.

13 On March 13, 2015 the Plaintiff entered into a stipulation with  
 14 Petrobras Brazil to submit the matter to arbitration pursuant to the  
 15 terms contained in the Joint Development Agreement.

16 On March 10, 2015 Petrobras America filed its reply to the  
 17 Plaintiff's opposition to the motion to dismiss, DE 49.

18 The hearing was held on March 12, 2015. The parties informed  
 19 the Court of the stipulation between Petrobras Brazil, and the Court  
 20 continued the hearing on Petrobras America's motion to dismiss to May  
 21, 2015. The Court requested that authority on the *Stern vs. Marshall*  
 22 jurisdictional issue be filed with the Court prior to the continued  
 23 hearing. On April 29, 2015 Petrobras America filed its consent to have  
 24 the bankruptcy court hear this matter pursuant to LR 7008.1.

25 **2. Discussion**

26 This is an action to enforce property rights of the estate pursuant  
 27 to 11 U.S.C. §541(a). This is a core matter under 28 U.S.C.  
 28

1                   §157(b)(2)(A) - matters concerning the administration of the estate -  
 2 and 28 U.S.C. §157(b)(2)(E) - orders to turn over property of the estate.

3                   A bankruptcy court may enter final judgment only if the court has  
 4 both statutory and constitutional authority to do so. *Matter of Galaz*  
 5 765 F.3d 426 (5th Cir. 2014)

6                   A bankruptcy court's statutory authority derives from 28 U.S.C.  
 7 §157(b)(1), which designates certain matters as "core proceedings" and  
 8 authorizes a bankruptcy court to determine the matters and enter final  
 9 judgments. As for "non-core" proceedings, 28 U.S.C. §157(c) authorizes  
 10 a bankruptcy court either to submit proposed findings of fact and  
 11 conclusions of law to the district court, which are reviewed *de novo*, or  
 12 to enter final judgment with the parties' consent.

13                  *Stern v. Marshall*, 131 S.Ct. 2594, (2011) did not deal with subject  
 14 matter jurisdiction under 28 U.S.C. §157. Rather, the issue was whether  
 15 the referral authorized by 28 U.S.C. §157(a) constitutionally allocates  
 16 the *authority* to enter final judgments between the bankruptcy court  
 17 and the district court. *In re Pringle* 495 B.R. 447 (9th BAP 2013) citing  
 18 *Stern*, 131 S.Ct. at 2607.

19                  In the wake of *Stern*, there are now core, non-core and *Stern*  
 20 proceedings. *Executive Benefits Ins. Agency v. Arkison*, 134 S.Ct. 2165,  
 21 2170 (2014) defined a *Stern* claim as one designated for final  
 22 adjudication in the bankruptcy court as a statutory matter, but  
 23 prohibited from proceeding in that way as a constitutional matter.

24                  The *Stern* claim in *Executive Benefits* was a fraudulent  
 25 conveyance. Such claims bring assets to the estate as opposed to  
 26 administering the assets that are already there. *Executive Benefits* held  
 27 that bankruptcy courts do not have the general authority to enter final  
 28

1 judgments on fraudulent conveyance claims brought under these  
 2 statutes.

3 *Stern* prohibits Congress from vesting a bankruptcy court with  
 4 the authority to finally adjudicate certain claims. However, the Court  
 5 did not address how courts should proceed when they encounter a  
 6 *Stern* claim. The procedure was laid out in *Executive Benefits*. When a  
 7 bankruptcy court is presented with a *Stern* claim, the proper course is  
 8 to issue proposed findings of fact and conclusions of law. The district  
 9 court will then review the claim *de novo* and enter judgment. *Id* at  
 10 2170.

11 What *Executive Benefits* did not resolve was whether Article III  
 12 permits a bankruptcy court, with the consent of the parties, to enter  
 13 final judgment on a *Stern* claim. *Id* at Footnote 4.

14 The issue of consent came before the Seventh Circuit in *Wellness*  
 15 *Intern. Network, Ltd. v. Sharif*, 727 F.3d 751, (7th Cir. 2013). The  
 16 Seventh Circuit held that a litigant may not waive an Article III  
 17 objection to a bankruptcy court's constitutional authority to enter final  
 18 judgment in a core proceeding. The Supreme Court has granted  
 19 Certiorari, but an opinion has not yet been issued. It is hoped that the  
 20 Court will address whether a bankruptcy court may enter a final  
 21 judgment on a *Stern* claim with the consent of the parties.

22 To summarize, the Plaintiff's claims against Petrobras America are  
 23 *Stern* claims. The parties have both consented to this Court entering a  
 24 final judgment, but at this time it is not clear whether final judgment on  
 25 a *Stern* claim can be entered where the parties consent. What is clear is  
 26 that this Court may proceed to hear the case and issue proposed  
 27 findings of fact and conclusions of law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
DATED this 14<sup>th</sup> day of May, 2015

STEPHEN R. HARRIS, ESQ.  
HARRIS LAW PRACTICE LLC  
6151 Lakeside Drive, Suite 2100  
Reno, Nevada 89511

/s/ *Stephen R. Harris*

---

Attorneys for Plaintiff